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NO. 83-833

IN THE SUPREME COURT

of the

UNITED STATES

October Term 1983

THE MUCKLESHOOT INDIAN TRIBE; AGATHA JERRY STARR; DONALD JERRY; LAWRENCE JERRY; BERT MOSES; HERMAN MOSES; CECIL MOSES; and HOWARD MOSES,
Respondents,

v.

TRANS-CANADA ENTERPRISES, LTD.; SYNERGY INTERNATIONAL, LTD.; and HERBERT GUENTHER, *Petitioners.*

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RAYMOND L. DAVIS
COUNSEL OF RECORD
Suite 100, 2615 Fourth Avenue,
Seattle, Washington 98121
Telephone: (206) 292-1550

ROBERT E. RATCLIFFE
Duncan Building, Third Floor
315 Second Avenue South
Seattle, Washington 98104
Telephone: (206) 622-7050
Counsel for Petitioners

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There are no parent companies, subsidiaries or affiliates of the Petitioners except that N.B. Cook Company, a Canadian corporation, is the parent company of Trans-Canada Enterprises, Ltd.

APPENDIX G

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MUCKLESHOOT INDIAN TRIBE, et al.,
Plaintiffs,

vs.

TRANS-CANADA ENTERPRISES, LTD., et al.,
Defendants.

NO. C77-909R
MEMORANDUM OPINION

The dispute between the parties in this case involves three areas of land within Section 28 of the Muckleshoot Indian Reservation as enlarged by an executive order of 1874. Two of these areas shall be referred to as the north and south channels of the White River. The third area is that portion of Government Lot 3 which, when originally conveyed by government patent to Muckleshoot Indian Jerry Dominick in 1905, was located entirely north of the White River but which now, due to the ensuing change in the river's course, lies south of the White River.

The Court must address three basic questions:

(1) When the United States enlarged the Muckleshoot Reservation by executive order in 1874, did it intend to grant the riverbeds of the north and south channels in trust to the Muckleshoot Indian Tribe for the exclusive use of the tribe as a whole?

(2) If the answer to the first question is affirmative, did the United States intend to divide up the riverbeds to the north and south channels and convey portions of the riverbeds to individual Indian families by government patents in 1905, thus divesting the tribe of its interest in the riverbeds, or did the riverbeds continue to be reserved for the tribe as a whole?

(3) What was the nature of the changes in the White River's course and what effect did those changes have on the location of the channel riverbeds and Government Lot 3?

I

Returning to the first question, did the United States intend in 1874 to grant the Muckleshoot Tribe the riverbeds of the White River in Section 28?

The Court recognizes that the executive order of 1874 enlarging the reservation did not mention the riverbeds of the White River. Nor did the United States ever explicitly express in any document an intent to grant the riverbeds to the Muckleshoot Tribe as a whole.

However, because the grantee in this case is an Indian tribe, this absence of explicit reference to riverbeds is not controlling. The United States Supreme Court only recently reaffirmed this special principle of construction in *Choctaw Nation v. Oklahoma,* 397 U.S. 620 (1970).

Rather than focusing only on the explicit language of the documents involved in enlarging the Muckleshoot Reservation, the Court must determine whether, in light of the circumstances, the United States intended to grant the riverbeds. The Court must therefore examine the surrounding historical circumstances including treaty promises, the manner in which the reservation was created, the reason for choosing a particular location, and the economic and cultural dependency of the Indian tribe on access to a certain body of water. Examples of cases which have set forth and followed this standard are *Choctaw Nation, supra; Moore v. United States,* 157 F.2d 760 (9th Cir. 1946); *Donnelly v. United States,* 228 U.S. 243, 259-264 (1913); and *Alaska Pacific Fisheries v. United States,* 248 U.S. 78 (1918). Furthermore, according to *Choctaw Nation* at 631, documents bearing on riverbed ownership within an Indian reservation should be construed on the assumption that the United States was acting for the tribe's benefit and any ambiguities are to be resolved in the tribe's favor.

Keeping in mind the above special tenets of construction and having carefully listened to the testimony and examined the exhibits submitted, the Court must conclude that the evidence overwhelmingly establishes an intent on the part of the United States to reserve the north and south

channels of the White River in Section 28 for the tribe's benefit as a whole.

In their pretrial order, the parties agreed that the Muckleshoot Indian Tribe is composed of descendants of White, Green Upper Puyallup and Duwamish River Indians, and that several important Indian settlements and fisheries of Muckleshoot ancestors were located along the White River. The parties also agree that Muckleshoot ancestors relied on rivers and streams for fishing, commerce and religious purposes, and that fishing was an integral part of their means of sustenance, social customs and religious practices. Neither do defendants contest that Muckleshoot ancestors' fishing was done on a communal basis and that their traditional fishing techniques required communal use of riverbeds.

Testimony by plaintiff Tribe's expert witness, an anthropologist with extensive knowledge of Pacific Northwest Coast Indians, coupled with supporting documentary exhibits, further laid an extremely persuasive historical basis for the Court's conclusion. Briefly summarized, the evidence reveals that through its agents in Washington Territory, the United States government was well aware during the treaty-making process and the subsequent establishment and enlargement of the Muckleshoot Reservation that the Muckleshoot ancestors were dependent on rivers to sustain themselves and their culture. But contrary to the Government's treaty promises and Governor Isaac Steven's promise that the Muckleshoot ancestors would be located on a reservation between the White and Green Rivers, the 1857 Muckleshoot Reservation was situated on a prairie without access to any river or fishery.

Correspondence and historical evidence from ensuing years reveals that the Muckleshoot ancestors expressed dissatisfaction and that United States Indian agents made efforts to secure available land on the White and Green Rivers which could be added to the Reservation in fulfillment of the government's promises. The final result of these efforts was the 1874 executive order enlarging the Reservation to include land stretching for six miles on both sides of the White River. When compared to the usual compact form of Indian reservations, the elongated, checkerboard shape of the enlargement can leave no doubt that its purpose was to provide the Muckleshoot ancestors with access to the White River.

The Court is thus confronted with uncontroverted evidence of the following circumstances: The enormous importance of rivers to the Muckleshoot ancestors' economy, social organization, cultural practices and religion; their traditional communal use of rivers and riverbeds; the knowledge of the United States government that rivers and fishing were the central communal focus of Muckleshoot ancestors' lives; the government's promises that it would provide them with a reservation suitable to their needs; and the enlargement by executive order of the original, unsatisfactory Reservation to include land on both sides of the six-mile stretch of the White River. Under these circumstances, it seems clear that the United States did intend to grant the Tribe the riverbeds for their exclusive and permanent use.

II

The second question is whether, when the Unites States government assigned allotments by issuing government patents in 1905, it conveyed portions of the riverbeds in Section 28 to individual Indian assignees.

First, the court must distinguish between the north and the south channels. There is no question that the area covered by the north channel was not included in any government patents issued to individual Indians and thus remained reserved for the tribe as a whole.

As for the south channel, government patents which conveyed allotments riparian to it did include the acreage of the riverbed in the lands conveyed to individual Indians. However, the Court perceives several problems with ending the analysis at that point.

The first problem concerns the navigability of the south channel. While the parties agree that the north channel was a navigable stream, defendants maintain that the south channel was not navigable. They base this contention on the fact that the two government surveyors who conducted surveys of the White River's two channels in 1867 and 1874 meandered neither bank of the south channel, thus indicating a conclusion that it was not navigable. But, as stated in *Oklahoma v. Texas,* 258 U.S. 574, 585-586 (1922), any legal inference of navigability arising from the action of a surveyor has little significance because surveyors are not clothed with the power to settle questions of navigability. The test is instead:

> whether [the river] is used, or is susceptible to being used, in its natural and ordinary condition as a highway for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. 258 U.S. at 586.

The Court has reviewed the documents and expert testimony submitted on the issue of the south channel's navigability and is convinced that it was indeed a navigable stream. The evidence reveals that the south channel was used for canoe traffic and for the transportation of shingle bolts. Historical documents, transcripts from prior cases and the memories of individuals also indicate that, at least during certain portions of the White River's history, the majority of the river's water was carried in the south channel.

Therefore, because the south channel was in fact navigable, the Court must conclude that the surveys indicating otherwise were erroneous.

The general rule is that a disposition by the United States of public lands bordering on navigable waters only conveys title to the lands above the high water mark. Only where the United States has clearly expressed an intent to convey title to the riverbed of a navigable river can a Court generally find that the United States wished to divest itself of the riverbed. *Shively v. Bowlby,* 152 U.S. 1 (1894); *United States v. Finch,* 548 F.2d 822, 827-832 (9th Cir. 1976).

Given this standard requiring express intent, the Court confronts a second problem. The allotment process pursuant to which government patents were issued in 1905 was based on the surveys of the Reservation conducted in 1874 and in 1903. In 1874, Ross Shoecraft surveyed and subdivided the reservation as enlarged into forty-acre tracts in preparation for the future allotments of parcels to individual Indians. Because he meandered the right bank of the north channel, reflecting a conclusion that it was a significant stream, he excluded the north channel from the subdivided tracts riparian to it. By the same token, because he failed to meander either bank to the south channel, he did not exclude the acreage of that riverbed from riparian tracts. This method of proceeding was consistent with general surveying principles.

Then in 1903, J.J. Sheehan was commissioned to do a boundary survey of the reservation in connection with the allotment process. Apparently because his commission was limited to determining boundaries, Sheehan did not meander any banks of the White River nor did he redetermine the relationship between the subdivided tracts and the channels of the White River.

Given the Court's determination that the south channel was navigable, Shoecraft's and Sheehan's surveys were erroneous in failing to reflect that fact. If the surveyors had determined that the south channel was navigable, they would have, according to general surveying principles and instructions, meandered and excluded it from riparian tracts. Therefore, insofar as the United States purported to allot the acreage of the south channel to individual Indians based on Shoecraft's and Sheehan's subdivisions of the reservation, it did so on the basis of erroneous surveys.

This brings the court to the third problem. Apart from the surveys and the government patents issued on the basis of those surveys, the Court cannot find any evidence that the United States intended to divide up and assign portions of a riverbed to individual Indians. Indeed, the evidence is entirely inconsistent with such a conclusion.

The background of the treaty negotiations between the United States and the Muckleshoot ancestors indicates a desire on the part of the United States to provide the Muckleshoots with a suitable reservation. United States representatives were well aware that such a suitable reservation must include fishing grounds for the Indians' communal use.

The Treaties concluded between the United States and the Muckleshoot ancestors contained provisions both protecting the Indians' fishing rights and reserving power in the President to divide the reservation lands into allotments for assignment to individual Indians. The only internally consistent interpretation of these provisions is that in dividing up the reservation into allotments, the United States would not act so as to deprive the Indians of their ability to use their fishing grounds. The Court also notes that, as held in *Washington v. Fishing Vessel Association,* 433 U.S. 658, 675-676 (1979), a treaty must be construed, not technically, but as the Indians would naturally have understood it. According to the evidence in this case, the Indian signatories to the Treaties would have understood that the upland areas of a reservation might be divided into individual plots, but that any river flowing through the reservation would remain a communal resource for the use of the Tribe as whole.

Again in 1874, the Muckleshoot Reservation was englarged by executive order specifically to provide the Muckleshoot Indians with access to a river and traditional fishing grounds. The evidence reveals

that the only documented traditional Indian settlement within the reservation as enlarged was located near the confluence of Coal Creek and the south channel of the White River in Section 28, and that such settlements were generally located in the vicinity of fishing grounds. Evidence was also submitted based on anecdotal information from the early 1900's that there were significant runs of fish in in Coal Creek.

Thus the Court confronts a most curious set of circumstances. On the one hand, the acreage of the south channel was included in the allotments assigned to individual Indians pursuant to patents issued by the United States in 1905. On the other hand, the entire history of the relationship between the United States and the Muckleshoot Indians is inconsistent with and in fact militates against the conclusion that the United States intended to divide up the south channel among individual Indians.

The Court has examined caselaw and finds no cases directly on point. However, the court has found three cases addressing situations which it concludes are to varying degrees analogous. In *Montana Power Co. v. Rochester,* 127 F.2d 189 (9th Cir. 1942), the question presented was whether a United States government patent to alloted riparian land on a reservation conveyed title to the low water mark under state law or to the high water mark under federal law. That court concluded that the United States, having agreed to hold the reservation lands in trust for the Indian tribe, could not have intended to put the tribe at the mercy of future state policy which could substantially interfere with or foreclose the Indians' use of the shores for their fishing operations. The court emphasized that the Indian society is communal rather than individualistic, particularly regarding fishing and hunting grounds, and that the right of the tribe to take fish in reservation waters was carefully defined and safeguarded in the relevant treaty.

Sekaquaptewa v. MacDonald, 626 F.2d 113 (9th Cir. 1980), involved a dispute between the Navajo and the Hopi as to the boundary between their reservation lands. The court stated at 118 that: "If there is a general rule, then it is that an incorrect survey may not be relied upon to reduce the legal boundaries of an Indian reservation."

Finally, and most importantly, there is *United States v. Romaine,* 255 Fed. 253 (9th Cir. 1919). In that case, the appellees relied mainly on the testimony and map of a government surveyor who in 1873, under the

direction of the surveyor general, had surveyed and subdivided the Lummi Indian Reservation established by executive order in that same year. The court reviewed the evidence as a whole and concluded that this survey had erroneously excluded certain land at the mouth of the river from the reservation boundaries. The *Romaine* court held as follows at 260:

> We are unable to assent to the proposition that, because article 7 of the treaty reserves to the President at his discretion the power thereafter to remove the Indians from the reservation, the official survey of 1873 was in effect a removal of the Indians from the lands in controversy. The power to survey the lands so reserved in the treaty was the power to cause the whole or any portion of the reserved lands to be surveyed into lots, and to assign the same to individuals or families for permanent homes. The land in controversy was not adapted to such individual use, and there was no occasion to survey it, or to take from the Indians on the reservation the common right to use it for the purposes of fishing and digging shellfish, or other purposes, and the surveyor general, in causing the survey to be made, had no authority to exclude any of the reserved lands from the boundaries of the reservation. The error in failing to extend the survey so as to include the lands in controversy cannot prejudice the rights of the Indians.

Likewise in this case, there is no evidence that the surveyors or the surveyor general had the power to withdraw a navigable stream or fishing grounds from the tribe as a whole thereby contravening specific treaty provisions protecting Indian fishing rights. Nor is there any historical evidence that in issuing patents based on the erroneous surveys, the United States had any intent, express or implied, to withdraw the south channel from the tribe's use as a whole. The Court concludes that the United States had no intent to and did not convey the south channel to individual Indian assignees.

III

Finally, the Court turns to the nature of the changes in the White River's course. While a question of federal law, the impact of the White River's change of course on riparian and riverbed ownership must be settled by reference to the state law otherwise applicable. *Wilson v. Omaha Indian Tribe*, 422 U.S. 653,676 (1979).

The crux of the issue here is thus whether the changes in the river were accretive, as defendants argue, or avulsive, as plaintiffs contend. *Harper v. Holston,* 119 Wash. 436, 442; 205 P. 1062, 1064 (1922), sets forth the definitions of those terms and the legal effect on riparian boundaries:

> [When] grants of land border on running water, and the course of the stream is changed by that process known as accretion — that is to say, the gradual washing away on one side and the gradual building up on the other — the owner's boundary changes with the changing course of the stream.
>
> * * *
>
> On the other hand, it is equally the rule that, when a stream, which is a boundary, from any other cause suddenly abandons its old channel and creates a new one, or suddenly washes from one of its banks a considerable body of land and deposits it on the opposite bank, the boundary does not change with the changed course of the stream, but remains as it was before. This sudden and rapid change is termed in law an avulsion, and differs from an accretion in that the one is violent and visible, while the other is gradual, and perceptible only after a lapse of time.

Thus changes in boundaries of land bordering on running water due to floods, log jams or human rechanneling of rivers are deemed to be the result of avulsive movement. See, e.g., *Rose v. Riedinger,* 13 Wn. App. 222, 534 P2d 146 (1975); *Parker v. Farrell,* 74 Wn2d 553, 445 P2d 620 (1969).

The record overwhelmingly establishes that the history of the White River is a turbulent one, marked by floods, landslides, sudden changes in course, and human interference with the natural river flow ranging from diversions and dams to dynamite blasts. In the face of so much documented historical evidence concerning the river's violent flood patterns and other sudden changes of course, both from natural causes and as a result of deliberate human intervention, defendants' expert witness's testimony that the river had a "natural" tendency to straighten itself by slowly gravitating to the north over the years is not convincing.

More specifically, the Court has carefully compared the Government Land Office plat based on the government survey of 1874 and the next reliable map of the area drawn in 1900 by a Pierce County surveyor. The differences in the course of the White River's north and south channels through Section 28 are striking. The historical documentation

submitted in connection with Thomas Stetson's expert testimony clearly indicates that the principal causes of these dramatic changes were two large landslides in 1898 and 1899, floods, and intervention with the river's flow by citizens of Pierce and King Counties attempting to control their respective flooding problems. Because these events were undeniably avulsive in nature and because there is no evidence that the White River ever returned to its pre-1900 channels in Section 28, the last natural location of the White River's north and south channels is that delineated on the Government Land Office plat based on the survey of 1874.

IV

Therefore, the Court concludes that plaintiffs made out a prima facie case as to the following:

1. Both channels of the White River in Section 28 of the Muckleshoot Reservation were reserved by executive order in 1874 for the exclusive use of the Tribe as a whole.

2. In 1905, the United States conveyed to Jerry Dominick an area lof land denominated Government Lot 3 comprised of 33 acreS more or less and lying entirely north of the 1874 location of the White River.

The Court also concludes that plaintiff has shown that the south channel of the White River was a navigable stream.

Because plaintiffs made the above prima facie showing, 25 U.S.C. §194 shifted the burden of proof and persuasion to defendants in this case to prove that plaintiffs never had title to the three disputed areas or that plaintiffs were divested of title.

The Court concludes that defendants failed to carry their burden of proof. Specifically, they failed to prove that the United States did not in 1874 intend to grant the north and south channels of the White River in trust for the exclusive use of the Tribe as a whole. They also did not prove that the United States intended to and thereafter did convey any portion of the White River's channels within Section 28 to individual Indian assignees. Finally, they failed to prove that plaintiff Dominick

was divested of his interest in the disputed portion of Government Lot 3, or that the Tribe was divested of its interest in the channels of the White River because the course of the White River changed by virtue of accretion or reliction.

DATED ths 6th day of February, 1981.

UNITED STATES DISTRICT JUDGE

APPENDIX H

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MUCKLESHOOT INDIAN TRIBE, et. al.,
Plaintiffs,

v.

TRANS-CANADA ENTERPRISES, LTD., et. al.,
Defendants.

NO. C77-909R
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

THIS CAUSE having come on for trial on November 5, 1980, the plaintiffs appearing by and through their attorneys, Allen H. Sanders and Richard Reich, and the defendants all appearing by and through defendant Trans-Canada Enterprises, Ltd.'s attorney, Robert Ratcliff and the Court having considered the evidence and brief submitted by the parties, and being fully advised, now enters the following:

FINDINGS OF FACT

1. All Admitted Facts contained in the parties' agreed Pre-trial Order, but not specifically restated in these Findings, are incorporated herein by reference.

Ownership of Riverbed in 1874

2. Northwest Coast Indians of the Puget Sound region viewed watercourses as the center of their respective territories. Rivers were never considered boundaries. The focus of their world was on the rivers along which they lived and the rivers' resources. This characteristic was reflected not only in their dependency on watercourses for food and materials, but also in their manner of self-identification, language and religious practices.

3. Like other Northwest Coast Indians of the Puget Sound region, the ancestors of the Muckleshoot Indian Tribe were highly dependent on

and strongly oriented toward their waterways. In the mid-1800's, many of the aboriginal bands whose descendants comprise the present-day Muckleshoot Tribe lived in villages along the White, Green, Upper Puyallup, Black and Duwamish Rivers and their tributaries.

4. The rivers and streams along which Muckleshoot ancestors lived were the focal point of their economy, culture, and religion. In particular, the ability to harvest fish from the rivers was of vital importance to them. The capture of fish was an essential source of their food supply and an integral part of their social customs and religious practices.

5. The Muckleshoot ancestors' villages generally were sited at river locations suitable for erecting fishing weirs. Prior to and during their treaty negotiations with the United States government in the mid-1800's, they had several important settlements along the White River. At least one such village was located in the vicinity of Coal Creek near the White River's south channel, an area later encompassed within Section 28 of the Muckleshoot Indian Reservation as enlarged in 1874.

6. Fishing by Muckleshoot ancestors was traditionally done on a communal basis. There was no traditional system of individual ownership of fishing areas.

7. Muckleshoot ancestors, placed by the United States government on a reservation along the banks of a particular river, would naturally assume that the river belonged to them for their communal use.

8. Muckleshoot ancestors were parties to the Treaties of Medicine Creek and of Point Elliott, concluded in 1854 and 1855 respectively.

9. Representatives of the United States responsible for negotiating the Treaties of Medicine Creek and of Point Elliott with the Northwest Coast Indians were generally familiar with the Indians' customs and dependence on waterways. They were especially aware of the Indians' reliance on fishing as their prime means of sustenance. This awareness was specifically reflected in the Treaties, which included special provisons protecting the Indians' fishing rights.

10. The Treaties set aside certain specifically described lands for reservations and also provided in Articles 6 and 7 for the establishment of other reservations at locations suitable to meet the needs of the Indian

signatories. Pursuant to the Treaties, the Indians were to have an exclusive right to fish in rivers within their reservation boundaries.

11. Representatives of the United States responsible for negotiating the Treaties were aware of the Indian reliance on the White River and its resources. In 1856, Isaac Stevens, first governor of Washington Territory and chief United States negotiator and signatory to the Treaties, promised the Muckleshoot ancestors a reservation between the White and Green Rivers.

12. However, the Muckleshoot Reservation, as originally established in 1857, was located on a prairie with no access to any river.

13. The Indians assigned to the Muckleshoot Reservation were highly dissatisfied and protested this breach of promise to establish a reservation suitable to their needs.

14. In 1859, Michael Simmons, Indian agent for the Puget Sound region, attempted to ameliorate the situation by publishing notice of a proposed enlargement to the Muckleshoot Reservation which would include land between the White and Green Rivers and would extend to midstream of each river.

15. For nearly fifteen years after Simmon's publication of notice, Puget Sound Indian agents and officers in the Department of Indian Affairs continued the effort to establish an enlarged Muckleshoot Reservation with acess to the White and Green Rivers. The agents' and officers' correspondence from that period reflects a continuing concern about the Muckleshoot Indians' fear that their ancestral homes and traditional fishing grounds would be taken away from them. The agents and officers repeatedly warned that trouble would result unless the Muckleshoot Reservation was enlarged in keeping with prior promises by the United States government to include traditional fisheries on the White and Green Rivers.

16. Finally in 1874, President Grant signed an executive order setting apart five alternate sections of land through which the White River flowed as an enlargement to the Muckleshoot Reservation. The enlargement was a direct result of the United States government's concern that the Muckleshoot Indians be provided a traditional fishery within their reservation boundaries.

17. The checkerboard shape of the enlargement was a special exception to the general federal policy favoring the establishment of compact reservations in order to prevent interspersed Indian and non-Indian lands. This exception was specificlaly made to include a portion of the White River within the Muckleshoot Reservation.

18. In enlarging the reservation, the United States intended to reserve the channels of the White River within the reservation boundaries for the exclusive use of the Muckleshoot Tribe as a whole. The United States also intended that all members of the Tribe residing on the reservation would be able to use the river in traditional and novel ways for their subsistence and livelihood.

Navigability of South Channel of White River

19. In 1874, two channels of the White River flowed through Section 28 of the enlargement to the Muckleshoot Reservation. The parties agree that in this stretch of the White River, the north channel was navigable.

20. As for the south channel, it was used for canoe travel and transport during the latter half of the nineteenth century. Because Indian villages in northwestern Washington were located within easy access of canoe transport, the former existence of an Indian village near the confluence of Coal Creek and the south channel of the White River within the 1874 enlargement of the reservation supports the conclusion that the south channel was navigable by Indian canoes.

21. During the early years of the twentieth century, Indians used canoes during shingle bolt drives down the White River from upstream locations to the mills in the vicinity of Auburn and Sumner downstream from the reservation. Shingle bolts are short lengths of logs from which mills manufacture shingles.

22. For several years prior to 1906, the south channel of the White River flowing through Section 28 of the reservation as enlarged was used for shingle bolt drives.

23. Historical documentation from the period supports the conclusion that from 1897 to 1906, the south rather than the north channel at times carried most of the flow of the White River in Section 28.

24. The testimony and evidence submitted by expert witnesses Thomas Stetson and Dr. Barbara Lane on the navigability of the south channel was both credible and persuasive.

25. The south channel of the White River was a substantial, permanent channel carrying water at ordinary high water flows. It was susceptible to use and was used in the transportation of persons and property for commerce in the customary mode of the day.

Ownership of Riverbed After 1905

26. Article 7 of the Treaty of Point Elliott and Article 6 of the Treaty of Medicine Creek incorporated provisions of Article 6 of the Treaty with the Omahas which authorized the assignment of tribal lands on reservations to individual Indians or families and their heirs. The purpose of these assignments was to provide permanent sites where the assignees would be required to settle and engage in agriculture or risk cancellation of their assignments.

27. Pursuant to the instructions of the Department of Interior, the Muckleshoot Indian Reservation was surveyed and divided into allotments. In 1902 and 1903, an allotment schedule for the assignment of lots to individual Indian families was prepared in accordance with Article 6 of the Treaty with the Omahas. The President of the United States approvied the Muckleshoot Reservation allotment schedule on May 18, 1904.

28. Pursuant to the allotment schedule, the United States in 1905 issued patents conveying the allotments in severalty to various heads of Indian families and their heirs, subject to certain restrictions against alienation specified in the patent.

29. The bed of the north channel of the White River in Section 28 was not included in any of the allotments riparian to it. However, patents which conveyed allotments riparian to the south channel included the bed of that channel in the acreage assigned to individual Indian families.

30. The reason for this difference in treatment between the north and the south channels for allotment purposes lies in the surveys of the enlargement to the Muckleshoot Reservation done in 1867, 1874 and

1903 by government surveyors Ezra Meeker, Ross Shoecraft, and J.J. Sheehan, respectively.

31. Meeker and Shoecraft conducted their surveys pursuant to instructions from the Government Land Office. The instructions provided that the surveyor in the field should meander both banks of a navigable river, meander only the right bank of a nonnavigable but significant river, and meander neither bank of an insignificant stream.

32. In conducting his survey in 1867, Meeker meandered the right bank of the White River's north channel, but meandered neither bank of the south channel. In 1874, Shoecraft resurveyed the Muckleshoot Reservation and subdivided it into forty acre tracts in preparation for the future allotment process provided for in the Treaties of Medicine Creek and of Point Elliott. Shoecraft only remeandered the river where he found its location differed substantially from that shown in the earlier Meeker survey. He did not remeander the river within Section 28.

33. The fact that Meeker only meandered the right bank of the north channel in 1967 and that Shoecraft did not remeander the river within Section 28 in 1874 reflects their conclusion that the river in Section 28 was significant, but not navigable. Contrary to their conclusion, the White River, both north and south channels, was a navigable body of water through Section 28.

34. In 1903, J.J. Sheehan was commissioned to do a boundary survey of the Muckleshoot Reservation in connection with the allotment process. His field notes only fixed the location of the north and south channels where they crossed section lines and did not meander any banks of the White River.

35. A surveyor generally cannot relate lots to a river or exclude the acreage of a riverbed from lots riparian to that river unless he has drawn a meander line along at least one of the river banks. When Shoecraft subdivided Section 28 of the Muckleshoot Reservation into forty acre tracts, he did not exclude the acreage of the south channels's riverbed from tract riparian to it because, based on his erroneous conclusion that the channel was not navigable, he had not meandered either bank.

36. The Muckleshoot Reservation allotment schedule designating the tracts of land to be assigned to individual Indian families was drawn up in accordance with the reservation subdivisions as delineated by

Shoecraft in 1874 and Sheehan in 1903. The land descriptions contained in the government patents of 1905 which conveyed allotments to individual Muckleshoot Indian families were also based on the surveys done by Shoecraft and Sheehan.

37. Apart from the fact that patents issued in 1905 purported to convey the acreage of the south channel's riverbed to individual Indian families, there is absolutely no evidence that the United States government intended to remove the bed of the south channel from those lands reserved for the exclusive use of the Muckleshoot Tribe as a whole pursuant to the executive order of 1874.

38. During the negoitations between representatives of the United States and the Muckleshoot ancestors leading up to the Treaties of Medicine Creek and of Point Elliott, the United States clearly expressed its intent to provide the Indians with satisfactory reservationas and the means to sustain themselves. United States representatives were aware of the importance of fishing to the Muckleshoot ancestors and of their communal use of rivers.

39. The Treaties of Medicine Creek and of Point Elliott contained provisons both recognizing and protecting the Indian signatories' fishing rights, and reserving power in the President to divide reservation lands into allotments for individual Indian families. The Indian signatories would naturally have understood these provisions to mean that the upland areas of a reservation might be divided into individual allotments, but that a river flowing through the reservation would remain a communal resource for the use of the tribe as a whole.

40. The entire history of the negotiations leading up to the enlargement of the Muckleshoot Reservation in 1874 indicates that the United States intended to grant the Indians traditional fishing grounds for the exclusive use of the tribe as a whole.

41. The only documented traditional Indian settlement within the reservation as enlarged was located near the confluence of Coal Creek and the south channel of the White River in Section 28. In keeping with Northwest Coast Indians' cultural and economic reliance on fishing, such settlements were generally located in the vicinity of fishing grounds. Evidence also exists based on anecodtal information from the early 1900's that there were significant runs of fish in Coal Creek.

42. As for the process of devising an allotment schedule in 1902 and 1903, there is evidence that the Indian agent supervising the process on the Muckleshoot Reservation paid no attention to the relationship between the White River channels flowing through Section 28 and the allotments. In correspondence dated September 26, 1902, 1902, Charles Reynolds sent Dr. Charles Buchanan, Regional Superintendent of Indian Affiars, a map of Section 28 designating the allotments to be assigned and the proposed assignees. The map contains no indication of the White River's location.

43. The fact that the acreage of the bed of the south channel was included in conveyances of riparian allotments is not sufficient to establish an intent on the part of the United States to remove the south channel from the use of the Muckleshoot Tribe as a whole. The south channel was included in riparian allotments solely on the basis of surveyors' erroneous judgments that it was not navigable or significant and was thus unworthy of being meandered.

44. There is, furthermore, no evidence that the surveyors of Section 28 of the enlarged reservation were vested with any authority, express or implied, to divest the Tribe of riverbeds which the United States specifically intended to reserve for the Tribe's exclusive communal use pursuant to treaty promises and negotiations. On the contrary, the evidence apart from the patents issued on the basis of erroneous surveys is entirely inconsistent with and militates against the conclusion that the United States intended to divide up the south channel among individual Indians.

Ownership of Government Lot 3 after 1905

45. By patent dated February 3, 1905, the United States conveyed Allotment 7, with appurtenances and in severalty, to Jerry Dominick as head of his family and to his heirs, subject to certain restructions against alienation specified in the patent.

46. Allotment 7 as patented to Jerry Dominick included Goverment Lot 3, which was described as that portion of the southwest quarter of the northeast quarter of Section 28 north of the White River, an area of approximately thirty-three acres.

47. When Allotment 7 was patented to Jerry Dominick in 1905, the southern boundard of Goverment Lot 3 was located along the north

bank of the north channel of the White River in Section 28 of the 1874 enlargement to the Muckleshoot Reservation.

Causes of White River Movement.

48. The earliest reliable map of the White River's course through the Muckleshoot Reservation as enlarged is a Government Land Office township plat based on a survey conducted by Ezra Meeker and approved by the Surveyor General in 1867. As shown on that plat, the White River divided into two channels east of Section 28 of the enlarged reservation. The two channels flowed generally northwesterly through Section 28 and then joined again west of that section into one channel which continued running northwesterly to the Duwamish River and Elliott Bay. The Stuck River in 1867 was a distributary of the White River flowing from the south channel of the White River west of Section 28 and then running in a southwesterly direction to the Puyallup River and Commencement Bay.

49. In 1874, Ross Shoecraft resurveyed Section 28 and the surrounding area as part of a survey of the enlarged Muckleshoot Reservation. Shoecraft's survey was approved by the Surveyor General of Washington in 1874 and reveals no significant changes in the course of the White River in and around Section 28.

50. The next reliable map of the enlarged reservation was completed in 1900 by a surveyor for Pierce County, Washington. This map reflects major changes in the course of the White River through Section 28. The upstream point of separation of the two channels, previously east of Section 28, was located more than one thousand feet downstream within Section 28 itself, and the north and south channels no longer rejoined each other west of Section 28. Instead, the entire south channel flowed directly into and became the Stuck River, while the north channel continued in a northwesterly direction as the White River. Moreover, the configuration and location of both channels in Section 28 had changed. Of particular note is the fact that the position of the north channel had shifted considerably to the north of its location in 1874 in the area of Government Lot 3. After these changes, the portion of the White River's south channel in Section 28 was often referred to as part of the Stuck River.

51. Historical evidence and documentation from the late 1800's and early 1900's reveals that the primary causes for these dramatic changes

in the White River's course through Section 28 between 1874 and 1900 were landslides, floods and human alterations of the river flow.

52. In 1898, the north bank of the north channel in the northwest quarter of Section 28 slid into the river, blocking the channel and diverting the entire river flow into the south channel. Another large landslide caused by dynamiting on July 4, 1899 altered the course of the river within Section 28 and is reported in an article published in the Seattle Post-Intelligencer on July 6, 1899.

53. Prior to 1900, there was also considerable interference with the natural flow of the White River by citizens with agricultural interests in Pierce and King Counties. Settlers in both counties, working against each other, sought to alleviate their respective flooding problems by diverting the river either wholly into the White or the Stuck River. A reported dated May 13, 1907 by Major H.M. Chittenden of the United States Army Corps of Engineers, who had been requested to study the flood problems, states that from 1887 to 1892 there had been "a good deal" of citizen interference near the point of separation of the White and Stuck Rivers. This interference caused a large portion of the White River flood waters of 1892 to go down the Stuck River. The report also states that during the ensuing six years, the flow of the White River had shifted back and forth several times between the north and south channels due mainly to artificial causes.

54. In 1906, a major flood again substantially altered the course of the White River. During the course of the flood, a drift jam formed at the point of diversion between the river's two channels in Section 28, blocking the south channel. However, later in the flood, another jam formed downstream and entirely blocked the north channel west of Section 28. The water washed across the narrow neck of land separating the White and Stuck Rivers and flowed exclusively into the Stuck.

55. Later maps of Section 28 and contemporary historical evidence continue to reveal marked changes in the White River's course. By 1915, the south channel had stopped carrying water on a perennial basis. Except for flood stage overflows from the White River's north channel into the southern portion of the flood plain, the south channel has now been completely dry for at least fifty-five years. The north channel has moved generally north of its location as surveyed in 1900 and has also become considerably straighter.

56. Principal causes of White River movement since 1900 have included major floods in 1906, 1917, 1919 and 1933. Human interference has also played a very large role in determining the course of the White River. From its inception in 1914 until recently, the Inter-County River Improvement Agency, created by joint agreement between King and Pierce Counties, built dams and drift barriers, engaged in continuous drift removal, straightened and lined the north channel, blocked secondary channels and used gravel and rock dikes for bank protection in order to confine the White River to one permanent channel in the northern part of its flood plain. These activities have in varying degrees all affected the movement of the White River in Section 28.

57. The principal causes of river movement between 1874 and 1900 within Section 28, including two large landslides, flooding and human interference, were avulsive in nature. Since 1900, the configuration and location of the White River's channels have continued to change, and have not returned to their pre-1900 state. The last natural location of the White River channels in Section 28 prior to the avulsive events of the late 1800's is reflected in the Government Land Office plat based on Shoecraft's survey of 1874.

58. Insofar as expert witnesses' conclusions regarding the nature of changes in the White River's course differed, the testimony and evidentiary support offered by Thomas Stetson was much more persuasive and credible than that offered by Harry Jones. Although his graphic presentation reflected the same significant alterations in the river's course as Mr. Stetson's, Mr. Jones offered no concrete explanations for the often dramatic changes over relatively brief periods of time. At most, he conceded that the White River had avulsive moments, but then added that it always returned to its pre-avulsive channel or channels and only gradually moved over the years to its present location. Mr. Jones' testimony is not supported by the maps in evidence, much less the historical documentation of the White River's turbulent past.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, and upon the arguments of law presented by counsel at trial and in their written memoranda, the Court reaches the following Conclusions of Law:

1. The Court has jurisdiction over the parties and the causes of action stated in this case.

2. Plaintiffs have made a *prima facie* showing that:

(a) Both channels of the White River in Section 28 of the Muckleshoot Reservation were navigable for title purposes in 1874 and during the subsequent period from 1874 to at least 1906;

(b) Pursuant to the executive order of 1874, all portions of the 1874 bed of the White River in Section 28 were reserved for the exclusive communal use of the Muckleshoot Indian Tribe.

(c) In 1905, the United States issued a patent conveying Government Lot 3, an area of thirty-three acres more or less located entirely north of the 1874 location of the White River, to individual Muckleshoot Indian Jerry Dominick as head of his family and to his heirs.

3. Plaintiffs having made the above *prima facie* showing, 25 U.S.C. §194 shifts the burden of proof and persuasion to defendants to prove that plaintiffs either never had any title to the disputed lands or that plaintiffs were divested of their title.

4. Defendants have failed to meet their burden of proof. Specifically, they have failed to prove that:

(a) Plaintiff Tribe was not granted exclusive use of the riverbeds in Section 28 pursuant to the 1874 executive order; or that

(b) The United States did not convey the disputed portion of Government Lot 3 to individual Indian Jerry Dominick and his heirs; or that

(c) The United States government in 1905 intended to and did convey portions of the White River's 1874 south channel in Section 28 to individual Indian riparian assignees; or that

(d) Plaintiffs have been divested of their interests in the 1874 riverbeds and the disputed portion of Government Lot 3 by accretive or relictive movements of the White River.

5. Plaintiffs are, therefore, entitled to an order ejecting defendants from the disputed land comprising the 1874 location of the White River's north and south channels in Section 28 and from this disputed portion of Government Lot 3.

The Clerk of this Court is directed to enter a judgment ejecting defendants from the three disputed areas in this case.

The Clerk is further directed to send uncertified copies of these Findings and Conclusions to all counsel of record.

DATED at Seattle, Washington, this 12th day of February, 1981.

UNITED STATES DISTRICT JUDGE

APPENDIX I

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MUCKLESHOOT INDIAN TRIBE, et. al.,
Plaintiffs,

v.

TRANS-CANADA ENTERPRISES, LTD., et. al.,
Defendants.

NO. C77-909R
JUDGMENT

THIS MATTER having come on for consideration before the Court, Honorable Barbara J. Rothstein presiding, and the issues having been duly considered and a decision having been duly rendered,

IT IS HEREBY ORDERED AND ADJUDGED that all defendants shall be ejected from the three disputed areas of land in this case. If the parties are unable to agree on a surveyor to mark out the disputed areas on the ground, either party may apply to the Court for the appointment of a qualified surveyor.

Costs shall be allowed to plaintiffs pursuant to Rule 54(d), Fed. R. Civ. P.

DATED at Seattle, Washington, this 12th day of March, 1981.

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Deputy Clerk, U.S. District Court

APPENDIX J

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MUCKLESHOOT INDIAN TRIBE, et. al.,
Plaintiff—Appellee

v.

TRANS-CANADA ENTERPRISES, LTD.,
Defendant-Appellant
and
HERBERT GUENTHER,
Defendant-Appellant

Nos. 81-3178
81-3197

D.C. No.
C77-909R
ORDER

Appeal from the United States District Court
for the Western District of Washington

Honorable Barbara J. Rothstein
United States District Judge, Presiding

Argued and Submitted: March 2, 1982

Before: KENNEDY, FARRIS and NORRIS, Circuit Judges

The judgment of the district court is vacated and the cause remanded so that the district court, after considering such further evidence and points and authorities as it deems appropriate, may reconsider its ruling in light of *Montana v United States*, 450 U.S. 544 (1981).

APPENDIX K

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MUCKLESHOOT INDIAN TRIBE, et. al.,
Plaintiffs,

v.

TRANS-CANADA ENTERPRISES, LTD., et. al.,
Defendants.

NO. C77-909R
ORDER GRANTING PLAINTIFFS'
MOTION TO REINSTATE JUDGMENT

THIS MATTER comes before the court upon plaintiffs' motion to reinstate the judgment in which this court found that the United States intended in its 1874 treaty to grant the riverbeds of the north and south channels of the White River in trust to the Muckleshoot Indian Tribe for the exclusive use of the tribe as a whole. On March 5, 1982 the Ninth Circuit Court of Appeals vacated the judgment and remanded the cause for reconsideration in light of *Montana v. United States,* 450 U.S. 544 (1981). Having reviewed the motion, memoranda of counsel, and the previous findings of this court, as well as *Montana v. United States,* the court finds and rules as follows:

In *Montana v. United States,* the United States Supreme Court considered the question, essentially the same as the one presented to this court, of whether the United States had conveyed beneficial ownership of the riverbed of the Big Horn River to the Crow Tribe by two treaties entered into with the Tribe prior to the admission of Montana into the Union. In deciding that the Crow Tribe did not own the riverbed, the Court set out several principles. As a general matter the federal government holds lands under navigable waters in trust for the states. The court deciding a question of title to the bed of navigable water must begin with a strong presumption against conveyance by the United States. A court should not find that submerged lands have been conveyed unless the United States was acting because of some special duty or exigency and its intention to convey such land was definitely declared or otherwise made plain. It is established, however, that the

United States may convey such lands and defeat the title of a new state in order to perform international obligations, to effect the improvements of such lands for the promotion and convenience of commerce, or to carry out other public purposes. *Montana v. United States,* 450 U.S. at 551-54, *citing to, Shively v. Bowlby,* 152 U.S. 1, 48 (1894) and *United States v. Holt,* 270 U.S. 49, 55 (1926).

Upon analysis, this court concludes that the reasoning in its memorandum opinion and findings and conclusions, which underlie the court's judgment of March 12, 1981, is not inconsistent with *Montana v. United States.* In fact, the court already assumed the law as creating a presumption against the conveyance by Congress of the bed of navigable waters and found that the intent to convey the riverbed of the White River was made plain. Memorandum Opinion at 3-4. The court's considerations and authorities in rendering its decision were the same ones set forth in *Montana.* The differing results are appropriate given the different treaties, background and historical circumstances of the two cases.

The court found that the focus of the Muckleshoots' world was on the rivers along which they lived and the rivers' resources. They depended on watercourses, not only for food and materials, but also in their manner of self-identification, language and religious practices. The capture of fish was an essential source of their food supply and an integral part of their social customs and religious practices. See Findings of Fact 2, 3, 4, and 5. Muckleshoot ancestors, placed by the United States government on a reservation along the banks of a particular river, would naturally assume that the river belonged to them for their communal use. Finding of Fact 7. Representatives of the United States responsible for negotiating the treaties in the present case were generally familiar with the Indians' customs and dependence on waterways. This awareness was specifically reflected in the special provision of the treaties protecting the Indians' fishing rights. Finding of Fact 9.

Despite the foregoing facts, the Muckleshoot Reservation, as originally established in 1856, was located on the prairie with no access to any river. The Indians assigned to the Reservation were highly dissatisfied and protested this breach of promise to establish a reservation suitable to their needs. Findings of Fact 12 and 14. In 1859, Michael Simmons, Indian agent for the Puget Sound Region, attempted to ameliorate the situation by publishing notice of a proposed

enlargement to the Muckleshoot Reservation which would include parts of the White and Green Rivers. For the next fifteen years, Indian agents and officers of the Department of Indian Affiars continued the effort to establish an enlarged reservation. Their correspondence reflects a continuing concern about the Indians' fear that their ancestral homes and traditional fishing grounds would be taken away. The agents and officers repeatedly warned that trouble would result unless the Reservation was enlarged. The Reservation was enlarged in 1874. The checkerboard shape of the enlargement was a special exception to the general federal policy favoring the establishment of compact reservations; the exception was specifically made to include a portion of the White River within the Muckleshoot Reservation. The United States intended that all members of the Tribe residing on the Reservation would be able to use the river in traditional and novel ways for their subsistence and livelihood. Findings of Fact 14-18.

The Findings of Fact 1-18 which the court made in this case demonstrate that the United States' intention to convey the riverbeds in question was "made plain." *Montana v. United States,* 450 U.S. at 552. There is nothing in the *Montana* decision that would warrant changing the findings and conclusions. The *Montana* Court stated that "the establishment of an Indian reservation can be an 'appropriate public purpose' within the meaning of *Shively v. Bowlby,* 152 U.S. at 48, justifying a congressional conveyance of a riverbed . . . ." *Id.* at 556, *citing Alaska Pacific Fisheries v. United States,* 248 U.S. 78, 85 (1918).

The instant case is very similar to *Alaska Pacific Fisheries v. United States, supra,* which is specifically cited in *Montana* as an example of circumstances justifying the conveyance of beds of navigable waters. There, the Supreme Court looked to the Metlakhtla Tribe's historical dependency on waterways. The defendant argues that *Alaska Pacific* did not deal with title to the bed of the adjacent waters, but rather only with the question of fishing and water rights. Defendant misreads that case. The Supreme Court stated,

> The principal question for decision is whether the reservation treated by the Act of 1891 embraces only the upland of the islands or includes as well the *adjacent waters and submerged lands.* The question is one of construction — of determining what Congress intended by the words, "the body of lands known as Annette Islands."

(emphasis added). *Alaska Pacific Fisheries v. United States,* 248 U.S. at 87.

As defendant points out in his memorandum, in order to determine what Congress intended by "the body of lands known as Annette Island," the Supreme Court considered the fishing background of the Metlakhtla Tribe. Furthermore, it was precisely this point which the *Montana* Court relied on to distinguish the claim of the Crow Indian Tribe to the Big Horn River. Unlike the Metlakhtla Indians' situation, the treaties with the Crow presented no public exigency because "the Crows were a nomadic tribe dependent chiefly on buffalo, and fishing was not important to their diet or way of life." *Montana v. United States,* 450 U.S. at 556. Defendant's memorandum states:

> The [Muckleshoot] Tribe's case is based upon undisputed historical evidence that the Tribe would have expected its fishing and water rights to be preserved in the Treaty and Executive Order. That historical evidence is compelling and persuasive as to fishing and water rights.

Memorandum of defendant at 6.

Defendant's insistence that the "undisputed historical evidence" is unpersuasive on the question of title to the riverbed is undermined by his misreading of *Alaska Pacific.* Not only would the Tribe have expected its fishing and water rights to be preserved in the Treaty and Executive Order, but those documents were the result of negotiations which took place because of the express concern of government officials that if the Muckleshoots were not given exclusive use of section of the White River, there would be an outbreak of hostilities.

The *Montana* court cited *Choctaw Nation v. Oklahoma,* 397 U.S. 620 (1970) as another case which justified a finding of the intent to convey made plain by the circumstances of the unusual history of the treaties at issue there. According to the Court in *Montana, Choctaw* resulted from the special history of broken promises by the government and increasing distrust of the tribe. After several relocations, the tribe signed a treaty which granted reservation lands in fee simple and promised they would not become part of any State or Territory. Id. at 555-56 n. 5.

Similarly those tribes composing the Muckleshoot Tribe faced broken promises and confinement to reservation lands where they could not sustain themselves. Their protestations and increasing hostility

aroused fear that unless they were given suitable lands, there would be trouble. Finally, the reservation was enlarged to include sections of the White River. The enlargement was intended to reserve the channels of the river within the reservation for the exclusive use of the Muckleshoot Tribe. As in *Choctaw* there was no express conveyance of the riverbed.

Finally, the court's prior findings and conclusions are supported by the reasoning in *Confederated Salish & Kootenai Tribes v. Namen,* 665 F.2d 951, 960-62 (9th Cir. 1982). In *Namen* the Ninth Circuit held that the bed of the southern half of Flathead Lake belonged to the Indian tribes and distinguished *Montana.* As here, the Court of Appeals relied on the Kootenai Indians' historical reliance on fishing and on the specific reference in the Hell Gate Treaty to the Flathead Lake. *Namen,* 665 F.2d at 962. There was no express conveyance in the Hell Gate Treaty, but the boundary set therein bisected the lake. The Court reasoned that the natural way of understanding the boundary description was to infer an intent to convey the southern half of the lake and with it the lake bed. *Id.* The situation and reasoning is analagous to both this court's memorandum opinion and its findings and conclusions.

For the foregoing reasons, IT IS ORDERED that plaintiffs' motion to reinstate this court's judgment of March 12, 1981 is GRANTED.

The clerk of the court is directed to send uncertified copies of this Order to counsel of record.

DATED at Seattle, Washington this 9th day of July, 1982.

BARBARA J. ROTHSTEIN
UNITED STATES DISTRICT JUDGE

APPENDIX L

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MUCKLESHOOT INDIAN TRIBE, et. al.,
Plaintiffs,

v.

TRANS-CANADA ENTERPRISES, LTD., et. al.,
Defendants.

CIVIL ACTION FILE NO. C77-909R
JUDGMENT

This action came on for trial (hearing) before the Court, Honorable Barbara J. Rothstein, United States District Judge, presiding, and the issues having been duly tried (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the Court grants plaintiff's motion to reinstate judgment.

Dated at Seattle, Washington, this 9th day of July, 1982.

_____

Deputy Clerk of Court